INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statement	2
Argument	8
Conclusion	14
Appendix A	15
Appendix B	20

CITATIONS

Cases:

Armstrong v. *New La Paz Gold Mining Co.*, 107 F. 2d 453	11
Bohlen v. *Callaway*, 267 U. S. 479	12
Bryan v. *Smith*, 174 F. 2d 212	13
Cohen v. *Beneficial Loan Corp.*, 337 U. S. 541	13
Deckert v. *Independence Corp.*, 311 U. S. 282	5, 13
Fahey, Ex parte, 332 U. S. 258	1
Fahey v. *Mallonee*, 332 U. S. 245	1, 3, 4, 9
Fahey v. *O'Melveny & Myers*, 200 F. 2d 420, certiorari denied, 345 U. S. 952	8, 10
Federal Home Loan Bank v. *Mallonee*, 196 F. 2d 336	13
George v. *Victor Talking Machine Co.*, 293 U. S. 377	13
Gompers v. *Bucks Stove & Range Co.*, 221 U. S. 418	12
Greenleaf v. *Queen*, 1 Pet. 138	12
Hill v. *Wampler*, 298 U. S. 460	12
Home Loan Bank Board v. *Fahey*, 196 F. 2d 336	5
Home Loan Bank Board v. *Mallonee*, 196 F. 2d 336, certiorari denied, 345 U. S. 952	1, 4, 5, 6, 7, 9, 10
Lankford v. *Holton*, 197 Ga. 498	11
Latta v. *Kilbourn*, 150 U. S. 524	12

295455—54——1

Cases—Continued

	Page
Lyman v. *Remington Rand*, 188 F. 2d 306	13
Mallonee v. *Fahey*, 117 F. Supp. 259	2, 6
Mallonee v. *Fahey*, 14 F. R. D. 273	2
Merriam v. *Saalfield*, 241 U. S. 22	12
Minneapolis R. R. v. *Peoria Ry.*, 270 U. S. 580	12
Myers v. *Bethlehem Shipbuilding Corp.*, 303 U. S. 41	5
North Carolina R. R. v. *Story*, 268 U. S. 288	5
Sprague v. *Ticonic Bank*, 307 U. S. 161	13
Trustees v. *Greenough*, 105 U. S. 527	13
United States v. *De Parcq*, 164 F. 2d 124	12
United States v. *U. S. Smelting Co.*, 339 U. S. 186	12
United States v. *Wallace Co.*, 336 U. S. 793	12
Statutes:	
Reorganization Plan No. 3 of 1947 (61 Stat. 954, 5 U. S. C. (Supp. V) 133y–16)	3
28 U. S. C. 1335	4
28 U. S. C. 1655	4
Miscellaneous:	
Moore's *Federal Practice*, Vol. 6, pp. 235–237	13

In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 656

MALLONEE, BUCKLIN AND FERGUS, SHAREHOLDERS' PROTECTIVE COMMITTEE, AND LONG BEACH FEDERAL SAVINGS AND LOAN ASSOCIATION, PETITIONERS

v.

FAHEY, AMMANN, AS CONSERVATOR, HOME LOAN BANK BOARD ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals (T. R.[1] 153) is reported at 208 F. 2d 197. Earlier stages of this litigation which have been before this Court include *Fahey* v. *Mallonee,* 332 U. S. 245; *Ex parte Fahey,* 332 U. S. 258; *Home Loan Bank Board* v. *Mallonee,* 196 F. 2d 336, certiorari

[1] T. R. refers to the typewritten volume, containing the proceedings had in the Court of Appeals, filed by petitioners in this Court.

denied, 345 U. S. 952, rehearing denied, 345 U. S. 978. See also *Fahey* v. *O'Melveny & Myers*, 200 F. 2d 420, certiorari denied, 345 U. S. 952, rehearing denied, 345 U. S. 978; *Mallonee* v. *Fahey*, 14 F. R. D. 273; and *Mallonee* v. *Fahey*, 117 F. Supp. 259.

JURISDICTION

The judgments of the Court of Appeals were entered on November 23, 1953 (T. R. 154, 155, 156). A timely petition for rehearing, filed on December 23, 1953, was denied on December 28, 1953 (T. R. 159). The petition for a writ of certiorari was filed on March 25, 1954. The jurisdiction of this Court is invoked under 28 U. S. C. 1253 and 1254.

QUESTIONS PRESENTED

1. Whether a plaintiff whose complaint has been dismissed finally and without reservation may thereafter seek review of the dismissal of an ancillary order entered during the litigation.

2. Whether an order directing a party to account, entered before issue has been joined, is *res judicata* so as to survive the dismissal of the complaint.

STATEMENT

Brief description of the basic litigation.—The instant petition and its companion, No. 659, seek to bring before this Court for a third time the exhaustive litigation devised to nullify two actions taken in 1946 by the Federal Home Loan

Bank Commissioner[2] in connection with his functions of supervising the Federal Home Loan Act system. The first step was the readjustment of the Federal Home Loan Bank districts of Portland and Los Angeles and their merger into a new San Francisco district. The second action, which forms the main basis of the instant petition, was the appointment of a Conservator for the Long Beach Federal Savings and Loan Association after an investigation had disclosed *prima facie* evidence of serious irregularities on the part of its management.[3] An injunction obtained by petitioners from a statutory court prohibiting the holding of administrative hearings to determine the appropriateness of this action, and removing the Conservator, was reversed by this Court in *Fahey* v. *Mallonee,* 332 U. S. 245, on the ground "that it was error to oust the Conservator or to enjoin any of his proceedings or to enjoin the administrative hearing, and this without prejudice to any other administrative or judicial proceedings which may be warranted" (*ibid.* at 257–258).

After remand, the proceedings went through a series of extremely complicated procedural stages brought about largely by petitioners' failure to

[2] By virtue of Reorganization Plan No. 3 of 1947 (61 Stat. 954, 5 U. S. C. (Supp. V) 133y–6), the Home Loan Bank Board has succeeded to the functions of the Federal Home Loan Bank Commissioner.

[3] Cf. our Brief in Opposition filed in No. 591, O. T. 1952, pp. 32–34.

cast the issues simply in terms of what was really involved, viz, an attempt to obtain judicial review of the regulation and supervision of the Savings and Loan Association, and their attempt to consider such administrative action as an utter nullity, thus filing pleadings as if the case were "a conventional cause of action in equity by an owner out of possession, to quiet title, to remove a cloud on title, and to regain possession."[4] The reason for this method of pleading, apparently, was petitioners' hope to escape the operation of the rules requiring the exhaustion of administrative remedies and preventing collateral attack upon administrative action, as well as to obtain the benefit of 28 U. S. C. 1335 and 1655, authorizing nationwide service in certain actions involving real property and interpleader. As a result of this theory of action, the length and number of the pleadings, the number of parties drawn into the case, and the record reached astronomical proportions (*Home Loan Bank Board* v. *Mallonee,* 196 F. 2d 336, 369), and the complexity of the proceedings grew enormously.

Finally, in 1952, five years after the decision of this Court in *Fahey* v. *Mallonee* had been handed down, the Court of Appeals for the Ninth Circuit had occasion to review an injunction granted by the District Court which, in effect, nullified the supervisory powers of the Federal

[4] Cf. Petition in No. 592, O. T. 1952, p. 43.

Home Loan Bank Board over Long Beach Federal Savings and Loan Association. The court reversed the injunction,[5] and in exercising its authority to determine whether there were any insuperable objections to the maintenance of the entire suit,[6] it held that the entire proceedings were subject to dismissal in view of petitioners' failure to exhaust their administrative remedy. *Home Loan Bank Board* v. *Mallonee,* 196 F. 2d 336, 370–371, 378–383. Petitions for certiorari (Nos. 591–596, 658, Oct. T. 1952), submitted and briefed by both sides in the realization that a denial would result in a mandate dismissing the complaint,[7] were denied by this Court. 345 U. S. 952, rehearing denied, 345 U. S. 978.

The Court of Appeals thereupon issued its mandate, dated May 21, 1953, remanding the proceedings to the District Court with directions to dismiss the principal pleadings, including those filed by the petitioners herein (Appendix A, pp. 15–19, *infra*).[8] Pursuant to this mandate, the Dis-

[5] *Home Loan Bank Board* v. Mallonee, 196 F. 2d 336, 383–390, 391.

[6] *Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U. S. 41, 52–53, and the authorities there cited; *North Carolina R. R.* v. *Story*, 268 U. S. 288, 292; *Deckert* v. *Independence Corp.*, 311 U. S. 282, 287.

[7] Cf. No. 591, O. T. 1952, Petition, p. 6, first question presented; see also pp. 55–56; our Brief in Opposition, No. 591, pp. 31–32, 46.

[8] The Court of Appeals did not direct the dismissal of the entire proceedings but only of certain pleadings. The reason for this procedure was apparently that a number of

trict Court, on December 11, 1953, dismissed the pleadings filed by petitioners (Appendix B, pp. 20, 22, *infra;* see also *Mallonee* v. *Fahey,* 117 F. Supp. 259, 275–276).

The instant proceedings. The appeal from the injunction which formed the basis for the decision in *Home Loan Bank Board* v. *Mallonee,* 196 F. 2d 336, *supra,* was not the only appeal in this litigation pending in the Court of Appeals. Among others, three appeals (C. A. 9, Nos. 12575, 12893, and 13055) had been noted from three orders awarding a Special Master certain interim allowances of fees to be paid out of funds on deposit in the registry of the District Court. App.* 97–111.

The appointment of the Special Master was closely connected with the termination of the conservatorship by the Home Loan Bank Board in 1948, described in more detail in our Brief in Opposition in No. 591, O. T. 1952, p. 21. At that time, the Board decided to end the conservatorship and, if so requested by an authorized

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home owners who sought to discharge their mortgages during the pendency of the conservatorship had been drawn into this maelstrom of proceedings and had been awarded—unnecessarily, as we believe—judgments directing reconveyances by the trustee. Rather than cast doubt upon the validity of these decrees, the mandate was drawn in such terms as to exempt them from its operation. See our Brief in Opposition in No. 593, O. T. 1952.

*App. refers to the Combined Appendix filed by petitioners in Nos. 656 and 659.

representative of the Long Beach Association, to turn the assets of the Association over to such representative, and also to direct the Conservator to account to the Board as prescribed by the regulations. However, the District Court promptly issued an order directing the Conservator to turn the estate over to the former management of Long Beach and to account to the court, the accounting to be had under the supervision of a Special Master to be appointed by the court. The fee orders on appeal to the Court of Appeals directed payment to this Special Master.

After the Court of Appeals had issued its mandate (in May 1953) in *Home Loan Bank Board* v. *Mallonee, supra,* respondents moved that court to remand the pending appeals to the District Court with directions to vacate the orders awarding the payment of fees to the Special Master and to take further proceedings in conformity with the opinions and judgments of the appellate court (T. R. 92–94). The Court of Appeals granted these motions, and this action forms the basis of the present petition. In its opinion, the court disposed also of an analogous motion to remand and vacate which forms the basis of the petition in No. 659 (T. R. 153).

In answer to petitioners' motion to dismiss the appeals on the ground that they were taken from interlocutory orders, the Court of Appeals held that since the orders directed payment out

295455—54——2

of a special fund upon which a lien was claimed,[10] they constituted a final disposition of a fund in controversy and hence were appealable. With respect to respondent's motion to remand, the court held that its earlier opinions had established that the District Court was without authority to proceed in these actions and that this conclusion required—

> not only the dismissal of the principal pleadings and proceedings, but also the dismissal of matters ancillary thereto. * * *
>
> It appears that the aforesaid special master was appointed * * * to perform functions which it has now been determined were beyond the power of the District Court to undertake.[11]

The orders awarding fees to the Special Master were reversed and remanded with directions to vacate them and the court directed that "proceedings be forthwith had in the * * * District Court in conformity with the order, judgment, and directive herein."

ARGUMENT

Petitioners, in effect, seek a rehearing of the basic question presented to this Court last

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[10] Cf. *Fahey* v. *O'Melveny & Myers*, 200 F. 2d 420, 431–434, fn. 4.

[11] The court also pointed out that its mandate (*infra*, pp. 15, 18–19) had already directed the return to respondent Federal Home Loan Bank of San Francisco of virtually all the funds in the registry of the District Court, the very source from which the Master's fee was to be paid.

term in Nos. 591–596, and 658, i. e., whether a Federal Savings and Loan Association, when it feels aggrieved by actions of the supervising authorities, may immediately challenge the validity of these protective measures in court by alleging that they were a nullity because "fraudulent,"[12] and thus thwart the administrative processes which Congress has seen fit to approve for the resolution of controversies between the Associations and the Home Loan Bank Board.[13] These problems were fully presented to this Court during the last term in Nos. 591–596, 658, and both parties submitted their briefs on the understanding that the ruling of the Court of Appeals covered not merely the question whether a particular injunction had been properly issued, but that it was intended to dispose definitively of the power of the District Court to entertain the basic action (see *supra*, p. 5). That ruling has now become final and is not open for review.

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[12] The Court of Appeals found "Personal corruption and breach of trust for personal gain are not charged against Administration officials in the instant case." *Home Loan Bank Board* v. *Mallonee*, 196 F. 2d 336, 380. The objections to the Conservator's accounting are based essentially on the claim that his appointment was a nullity, hence, that he had no authority to bind the Association. Cf. our opposition in No. 591, O. T. 1952, p. 22, fn. 49, and p. 37, fn. 72.

[13] In *Fahey* v. *Mallonee*, 332 U. S. 245, this Court pointed out (at 256) that these limitations imposed for public protection were the price the Association paid in exchange for its charter.

The issues properly involved in the present case are far narrower and of an entirely different nature. They have no bearing on the interpretation of the legislation underlying the Federal Home Loan Bank system. That was accomplished in *Home Loan Bank Board* v. *Mallonee,* 196 F. 2d 336, and *Fahey* v. *O'Melveny & Myers,* 200 F. 2d 420, certiorari denied, 345 U. S. 956, rehearing denied, 345 U. S. 978 (Nos. 591–596 and 658, O. T. 1952). All that is involved here is the method employed by a Court of Appeals to dispose of ancillary proceedings once it has been determined finally that the basic action must fail. Since the procedure to be utilized in this type of situation varies from case to case depending upon its posture, the decision below does not present a matter of general importance calling for review by this Court. Moreover, the decision is plainly correct, and there is no conflict.

1. The first obstacle petitioners have to overcome is their complete lack of standing. The judgments direct that certain orders awarding fees to a Special Master be vacated, but the Special Master does not seek review here. We do not know of any authority or principle which would give petitioners the right to litigate further in the interest of the Special Master who is content to accept the judgment below.

It seems, however, that petitioners do not seek so much to review that part of the decision

which vacates the Special Master's fee as to challenge the direction "that further proceedings be forthwith had in the * * * District Court in conformity with the order, judgment and directive herein," which includes the holding of the Court of Appeals that "its previous decisions in this matter require not only the dismissal of the principal pleadings and proceedings, but also the dismissal of matters ancillary thereto" and "that the special master was appointed * * * to perform functions which it has now been determined were beyond the power of the District Court to undertake."

This latter part of the court's direction contemplates not only the *vacatur* of the award of the Special Master's fees but, beyond that, the dismissal of the entire accounting proceedings. We may concede, for the sake of the argument, that petitioners would have standing to challenge this portion of the decree, if they still were parties to the proceedings. Their complaints, however, have been dismissed finally and without reservation (*supra*, pp. 5–6); hence, they are no longer parties and no longer in a position to challenge a decision of the Court of Appeals dealing with tangential aspects of the main litigation. *Lankford* v. *Holton*, 197 Ga. 498; cf. *Armstrong* v. *New La Paz Gold Mining Co.*, 107 F. 2d 453, 454 (C. A. 9).

2. Even if petitioners had standing, they could not show any error in the ruling below. We have here an order directing an accounting granted

prior to the ascertainment of the parties' rights, before even an answer had been filed. Such an ancillary decree is dependent, of necessity, upon the final outcome of the litigation and cannot survive the dismissal of the pleadings upon which it was based. *Minneapolis R. R.* v. *Peoria Ry.*, 270 U. S. 580, 584; *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 451; *Greenleaf* v. *Queen*, 1 Pet. 138, 148–149; *Bryan* v. *Smith*, 174 F. 2d 212, 215 (C. A. 7); *United States* v. *De Parcq*, 164 F. 2d 124 (C. A. 7); cf. *United States* v. *U. S. Smelting Co.*, 339 U. S. 186, 198–199. The dismissal of the ancillary accounting proceeding is the inevitable corollary of the prior dismissal of the complaints.

Petitioners seek to avoid this inescapable result by claiming that the 1948 order directing an accounting has become *res judicata* and somehow survives the unqualified dismissal of their pleadings. However, it is well established that only final judgments are capable of being *res judicata*. *Merriam* v. *Saalfield*, 241 U. S. 22, 28; *Bohlen* v. *Callaway*, 267 U. S. 479, 485; *Hill* v. *Wampler*, 298 U. S. 460, 466; *United States* v. *Wallace Co.*, 336 U. S. 793, 801; *United States* v. *U. S. Smelting Co.*, 339 U. S. 186, 199. Even an interlocutory judgment for an accounting rendered after a trial on the merits is not ordinarily considered a final judgment because "the court may change its rulings relating to the merits when the cause comes on for final hearing upon the ac-

count." *Latta* v. *Kilbourn*, 150 U. S. 524, 540; *George* v. *Victor Talking Machine Co.*, 293 U. S. 377, 378; *Deckert* v. *Independence Corp.*, 311 U. S. 282, 291. These considerations apply with even greater force to an accounting order rendered prior to the trial and even before issue had been joined.[14]

[14] The orders from which an appeal was taken here are final and appealable because they direct the payment of the Master's fees out of a fund claimed by an appellant, the Federal Home Loan Bank of San Francisco. As far as the Bank is concerned, payment is final and appealable. *Trustees* v. *Greenough*, 105 U. S. 527, 527–528; *Sprague* v. *Ticonic Bank*, 307 U. S. 161, 169. The failure of the District Court to make the certification provided for in Rule 54 (b) does not affect the finality of the order because it constitutes "a final disposition of a claimed right which is not an ingredient of the cause of action and does not require consideration with it." *Cohen* v. *Beneficial Loan Corp.*, 337 U. S. 541, 546–547; Moore's *Federal Practice* (2d Ed.) Vol. 6, pp. 235–237. *Lyman* v. *Remington Rand*, 188 F. 2d 306 (C. A. 2), cited by petitioners (Pet. 41), involves the converse situation, where a Master appealed from a decree awarding him only a part of the fee claimed but which left the door open for a reconsideration of his request. Plainly, the finality present in the instant case was completely lacking with respect to the Master in *Lyman*.

Moreover, it should be pointed out that even if the award of the Master's fees should not be considered final and appealable, the court below still had the power to make the order here involved, pursuant to its authority to enforce the mandate issued in *Federal Home Loan Bank* v. *Mallonee*, 196 F. 2d 336. The very considerations against piecemeal appeals which underlie the finality rule support the action of the Court of Appeals in clearing from its docket, and that of the District Court, the remnants of this proliferating litigation once it appeared that the main action could not be maintained.

CONCLUSION

The decision of the court below was correct and in full harmony with its earlier decision which this Court has refused to review. It is respectfully submitted that this petition for a writ of certiorari should likewise be denied.

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WARREN E. BURGER,
Assistant Attorney General,
SAMUEL D. SLADE,
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APRIL 1954.

APPENDIX A

Nos. 12511 and 12591

United States Court of Appeals for the Ninth Circuit

No. 12511

HOME LOAN BANK BOARD, ET AL., APPELLANTS

v.

MALLONEE, BUCKLIN AND FERGUS, ETC., ET AL., APPELLEES,

AND CONSOLIDATED CASE

FEDERAL HOME LOAN BANK OF SAN FRANCISCO, ET AL., APPELLANTS

v.

FEDERAL HOME LOAN BANK OF LOS ANGELES, ET AL., APPELLEES

No. 12591

JOHN H. FAHEY, ET AL., APPELLANTS

v.

O'MELVENY & MYERS, ET AL., APPELLEES

AND

FEDERAL HOME LOAN BANK OF SAN FRANCISCO, APPELLANT

v.

O'MELVENY & MYERS, ET AL., APPELLEES

Lodged. May 25, 1953. Edmund L. Smith, Clerk. By (S) S. W. Stacey, Deputy Clerk.

Mandate

UNITED STATES OF AMERICA, SS:

THE PRESIDENT OF THE UNITED STATES OF AMERICA

To the Honorable, the Judges of the United States District Court for the Southern District of California, Central Division, Greeting:

WHEREAS, lately in the United States District Court for the Southern District of California, Central Division, before you or some of you, in consolidated causes between Mallonee, Bucklin and Fergus, et al., plaintiffs, third party plaintiffs and cross-claimants, and John H. Fahey, et al., defendants, Civil No. 5421–P. H.; and between Federal Home Loan Bank of Los Angeles, et al., plaintiffs, and Federal Home Loan Bank of San Francisco, et al., defendants, Civil No. 5678–P. H.; wherein an Order of Preliminary Injunction was duly filed, and entered on the 2nd day of December 1949, and wherein an Order re allowance of attorneys' fees on account was duly filed and entered on the 19th day of June 1950; which said orders are of record and fully set out in said causes in the office of the Clerk of the said District Court, to which record reference is hereby made and the same is hereby expressly made a part hereof.

And whereas, the said John H. Fahey, et al., and said Federal Home Loan Bank of San Francisco have appealed to this Court as by the inspection of the transcript of the record of the said District Court, which was brought into the

United States Court of Appeals for the Ninth Circuit by virtue of an appeal agreeably to the Act of Congress, in such cases made and provided, fully and at large appears.

And whereas, on the 1st day of May, in the year of our Lord, one thousand nine hundred and fifty-one, the said consolidated causes came on to be heard before the said United States Court of Appeals for the Ninth Circuit, on the said transcript of record, and was duly submitted.

And whereas, on the 6th day of May, in the year of our Lord, one thousand nine hundred and fifty-two, the said consolidated causes came on to be heard before the said United States Court of Appeals for the Ninth Circuit, on the said transcript of record, and was duly submitted.

And whereas, said actions were consolidated in the District Court for all purposes, and a review of decisions in both said appeals was sought by appellees upon consolidated petitions for writs of certiorari to the United States Supreme Court, which said petitions were denied on the 4th day of May, 1953:

On consideration whereof, It is now here ordered and adjudged by this Court that the said orders of the said District Court in these consolidated causes be and hereby are reversed and that said consolidated causes be and hereby are remanded to the said District Court with directions to:

1. Dismiss Civil Action No. 5678–P. H. at the cost of plaintiffs.

2. Dismiss the following pleadings in Civil Action 5421–P. H.:

(a) The complaint of Mallonee, Bucklin and Fergus, and all amendments and supplements thereto, at the cost of said complainants;

(b) The cross-claim and third party complaint of Long Beach Federal Savings and Loan Association, and all amendments and supplements thereto, at the cost of third party complainant and cross-claimant;

(c) The cross-claim of Federal Home Loan Bank of Los Angeles, and all amendments and supplements thereto at the cost of said cross-claimant;

(d) The cross-claim in interpleader of Title Service Company, and all amendments and supplements thereto, at the cost of said cross-claimant;

(e) The cross-claim in interpleader, and all amendments and supplements thereto, of Robert H. Wallis, at the cost of said cross-claimant;

3. Dissolve, set aside and vacate the order of said District Court entered the 13th day of March 1948, insofar as the same requires Federal Home Loan Bank of San Francisco to deposit in the Registry of said District Court promissory notes in the aggregate principal amount of $6,300,000.00, collateral securing the same and any other documents or property deposited by San Francisco Bank pursuant to said order; and return to Federal Home Loan Bank of San Francisco without charge or impairment said promissory notes, together with Government bonds in the face amount of $5,300,000.00 with all interest coupons attached thereto at the time of deposit and together with cash from the sum in the Registry of said Court sufficient to make the com-

bined total sum of $6,324,098.35, with interest on $6,300,000.00 at 2% per annum from the 10th day of March 1948 until the date of such release.

4. Set aside and vacate said order of preliminary injunction entered the 2nd day of December 1949.

You, therefore, are hereby commanded that such proceedings be had in said consolidated causes, in conformity with the opinions and judgments of this Court, as according to right and justice, and the laws of the United States, ought to be had, the said appeals notwithstanding.

Witness, the Honorable Fred H. Vinson, Chief Justice of the United States, the 21st day of May in the year of our Lord one thousand nine hundred and fifty-three.

(S) PAUL P. O'BRIEN,
Clerk, United States Court of Appeals
For the Ninth Circuit.

APPENDIX B

United States District Court, Southern District of California, Central Division

No. 5421-PH Civil

MALLONEE, ET AL., PLAINTIFFS

v.

FAHEY, ET AL., DEFENDANTS

Filed December 11, 1953. Edmund L. Smith, Clerk. By (S) S. W. Stacey, Deputy Clerk.

Order dismissing pleadings in accordance with mandate

Whereas on December 2, 1949, the above entitled court entered an order of preliminary injunction in the within matter, and

Whereas the following defendants: Home Loan Bank Board, William K. Divers, J. Alston Adams, O. K. LaRoque, Federal Savings and Loan Insurance Corporation, John H. Fahey, A. V. Ammann, George K. Bramley and Federal Home Loan Bank of San Francisco appealed therefrom, which appeal was numbered 12511 in the U. S. Court of Appeals for the Ninth Circuit, and was not consolidated with any other appeal, and

Whereas said U. S. Court of Appeals, on April 2, 1952, filed its opinion and made its judgment reversing said order of preliminary injunction,

and its mandate on said appeal, together with the mandate on appeal No. 12591, was received by this court as one document on May 25, 1953, a true and correct copy of said mandate is attached hereto and made a part hereof, and

Whereas the petitions for rehearing of denial of certiorari were denied by the Supreme Court of the United States on June 9, 1953, and the Judgment on said appeals thereafter became final and said mandate was ordered spread on the records of this court on June 24, 1953, and

Whereas on October 12, 1953, there came on for hearing various motions in connection with said mandate and related case No. 13979, which were heard through October 24th, and this court filed a Memorandum of Opinion on November 30th, 1953, which is incorporated herein by reference.

In the above mentioned memorandum it was indicated that upon making the within order the Clerk would be directed to return to Wallis the cashiers check for $50,000 which had been deposited in court by him on filing his cross-claim in interpleader. Further examination of the files and records show that, after hearing, there was allowed and paid to Raymond Tremaine, as attorney for Wallis, the sum of $995.74 necessarily expended by him as costs in connection with his duties as counsel for Wallis (printed record p. 6340), and that there was allowed to him the sum of $27,000 on account as attorney's fees but after stipulation between counsel for all parties the sum of $9,000 was ordered paid on account of fees to said Tremaine as attorney for said Wallis (printed record p. 6527). It further

appears that the total sum thus paid ($9,995.74) to Tremaine was paid from the general funds deposited in court, most of which is, or was at that time, the property of the Long Beach Association and none of it was paid from said $50,000 cashiers check. For the foregoing reasons the $50,000 cashiers check is not now ordered returned to Wallis but will be retained by the Clerk pending motions and decision herein to assess costs in accord with said mandate.

Now, therefore, in compliance with the terms of paragraph 2 (a), (b), (c), (d) and (e) of said mandate,

It is hereby ordered that the following pleadings in civil action No. 5421-PH be, and the same are, hereby dismissed:

The Complaint of Mallonee, Bucklin and Fergus, and all amendments and supplements thereto, at the cost of said complainants;

The cross-claim and third party complaint of Long Beach Federal Savings and Loan Association, and all amendments and supplements thereto, at the cost of third party complainant and cross-claimant;

The cross-claim of Federal Home Loan Bank of Los Angeles, and all amendments and supplements thereto at the cost of said cross-claimant;

The cross-claim in interpleader of Title Service Company, and all amendments and supplements thereto, at the cost of said cross-claimant;

The cross-claim in interpleader, and all amendmends and supplements thereto, of Robert H. Wallis, at the cost of said cross-claimant;

The United States Attorney will make service of copy of the within Order and file proof of service.

Dated at Los Angeles, California, this 11th day of December 1953.

PEIRSON M. HALL,
Judge.

U. S. GOVERNMENT PRINTING OFFICE: 1954